IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.473/2007

Reserved on.21.9.2007

Decided on. 27.9.2007

Dhruv Kumar. **…Petitioner.**

Versus

The Secretary, HPSEB & others. **…Respondents**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1]*. No.*

For the petitioner : Mr. Ankush Sood, Advocate vice Mr. Vikas Rathore.

For the respondents Mr. Shrawan Dogra, Advocate.

Rajiv Sharma, J.

A challenge has been laid to the award dated 13.6.2006 passed by the Labour Court-cum-Industrial Tribunal, Dharamshala, District Kangra, H.P. in reference No. 265/2002.

The brief facts necessary for the adjudication of this petition are that the State Government after the receipt of failure report had made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of services of Sh. Dhruv Kumar son of late Sh. Bharat Singh, Ex daily wages beldar by the Executive Engineer, HPSEB Division Jogindernagar, District Mandi, 2. The Resident Engineer, Bassi Power House Division, HPSEB, Jogindernagar, District Mandi w.e.f. 25.6.1998 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

and amount of compensation Shri Dhruv Kumar is entitled to?"

In sequel to the reference made by the State Government and after the issuance of the notice by the Labour Court, the petitioner (hereinafter referred to as the workman) had filed statement of claim. He had primarily contended before the Labour Court that he was engaged by the respondents in the year 1994 and was retrenched in the year 1998 without following the mandatory provisions of Industrial Disputes Act, 1947, though he had completed 240 days. He also contended before the Labour Court that persons junior to him, namely, Vijay Kumar, Om Prakash, Prithi Chand, Durga Dass, Rajmal and Kanta Devi had been retained while retrenching him, thus violating the provisions of section 25-G of the Industrial Disputes Act, 1947. The claim filed by the workman was contested by the employer. The Labour court after hearing the parties had answered the reference in negative on the ground of delay and laches in raising industrial dispute by the workman on 13.6.2006.

Mr. Ankush Dass Sood, Advocate appearing vice counsel for the workman had strenuously argued that there was no inordinate delay in raising the industrial dispute since the workman was retrenched in the year 1998 and thereafter he had raised the demand before the Labour Officer-cum-Conciliation Officer and it was only after the failure report sent by the Labour Officer-cum-Conciliation Officer that the reference was made by the State Government in the year 2002. He has also contended that the workman had completed 240 days in a block of 12 calendar months and the persons junior to him were retained at the time of his retrenchment.

Mr. Shrawan Dogra, Advocate had argued that there was inordinate delay in raising the industrial dispute by the workman since his

retrenchment was effected in the year 1998 and the reference was made in the year 2002. In other words he has supported the award passed by the Labour Court.

I have heard the learned counsel for the parties and perused the record.

The workman was engaged in the year 1994 and retrenched in the year 1998. Mr. Ankush Dass Sood, Advocate had argued that his client had completed 240 days in a block of 12 calendar months at the time of his retrenchment and the persons junior to him, namely, Vijay Kumar, Om Prakash, Prithi Chand, Durga Dass, Rajmal and Kanta Devi were retained which is violation of section 25-G of the Industrial Disputes Act, 1947. He further argued that the Labour Court should have taken into consideration that the retrenchment of the workman was *void ab initio* instead of rejecting the claim only on the question of delay and laches.

The workman was disengaged in the year 1998. Thereafter he has raised the demand before the competent authority. The raising of the demand and consideration of the same by the authorities takes at least 3-6 months. Thereafter the Labour Officer-cum-Conciliation Officer has to strive for conciliation to maintain the industrial peace. This process also takes six months to one year. It is only when the failure report is made by the Labour Officer-cum-Conciliation Officer to the State Government that the reference is made by the State Government to the Labour Court. The decision taking process whether the reference should be made to the appropriate Labour Court-cum-Industrial Tribunal also takes considerable time. Accordingly it is held that there was no delay in raising the industrial dispute by the workman in view of the aforesaid discussion.

The matter can be viewed from another angle. It is well settled by now that the Labour Court should consider the question of delay in raising the industrial dispute at the time of granting of relief.

The Apex Court in ***State of Punjab v. Anil Kumar***, JT 2007 (7) SC 559 has upheld the award passed by the Labour Court though the workman had approached the Labour Court after 13 years but back wages as directed by the Labour Court and affirmed by the High Court were modified. Their Lordships have held as under:

> **"Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.**
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> **In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.**
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> **At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.**
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> **In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified."**

In the present case also, the Labour Court was bound to consider whether the retrenchment of the workman was *void ab initio* for non-compliance of section 25 (F) and (G) of the Industrial Disputes Act or not and the question of delay, if any, could be considered at the time of granting the relief.

Accordingly the writ petition is allowed. The award dated 13.6.2006 is set aside and the matter is remanded to the Labour Court-cum-Industrial Tribunal, Dharamshala for deciding the same afresh on its own

merits. The parties are directed to appear before the Labour Court-cum-Industrial Tribunal, Dharmshala on 26.10.2007. There shall be no order as to costs.

(Rajiv Sharma), Judge

September 27, 2007
Awasthi